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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re R.F. et al., Persons Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Appellant, v. A.F. et al., Defendants and Respondents.	C059596 (Super. Ct. Nos. JD227043 & JD227044)

Sacramento Department of Health and Human Services (DHHS) appeals from the juvenile court's dismissal of the dependency petitions it filed on behalf of minors R.F. and J.F. (Welf. & Inst. Code, §§ 300, 395.)[1] DHHS alleges the juvenile court erred

[1] Hereafter, undesignated statutory references are to the Welfare and Institutions Code.

by finding it had not proven the allegations of medical neglect true by a preponderance of the evidence. We affirm.

BACKGROUND

In February 2008, DHHS filed section 300 petitions on behalf of R.F. (then two-and-one-half years old) and J.F. (then eight months old), alleging the parents had abused and failed to protect the minors by failing to obtain medical treatment. The contested jurisdiction hearing on the petitions took place at the end of May 2008. The evidence presented to the juvenile court follows.

The petition alleged the parents failed to follow up with recommended treatment for a rash on R.F.'s face. R.F. was seen by physicians in January 2006, when he was four months old, for a persistent diaper rash. In March 2006, he was diagnosed with dermatitis, with rashes on his face and extremities. The parents were told to use a good lotion, one percent hydrocortisone cream on the rashes, and to follow up in nine months.

In June 2006, R.F. was seen for an upper respiratory infection. In September 2006, R.F. was seen for his one-year physical examination and immunizations. At the time of his physical examination, he had a rash on his leg. Physicians noted a well child with eczema.

In December 2006, mother brought R.F. to the doctor because he had spilled bleach in his eye. Medications were prescribed

for the eye injury and cortisone cream was prescribed for pink rashes on the child's cheeks and extremities.

In April 2007, R.F. was seen at a new doctor's office for a diaper rash. The physician's assistant noted R.F. was well-nourished and in no distress but had eczema/dermatitis, as indicated by redness on his cheeks. The parents were instructed to use over-the-counter hydrocortisone and Aquaphor,[2] and to use a steroid cream for one week. For the diaper rash, the parents were told to use Aquaphor ointment and return if the symptoms persisted. The parents believed the rashes were caused by food allergies.

In October 2007, father brought R.F. to the doctor's office, concerned about the rashes and possible food allergies. Father indicated R.F. had a history of developing rashes on his face and body secondary to consuming soy. Accordingly, the parents had been trying to avoid all soy. Parents had not realized peanut butter contained a lot of soy and, when R.F. was given peanut butter, he broke out in a dry red rash on his face and extremities. Parents had tried over-the-counter hydrocortisone cream and the rash on the extremities had improved. The nurse practitioner noted, again, that R.F. appeared well-nourished and did not appear to be in distress. Father requested a referral to a dermatologist and allergy

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[2] Aquaphor (spelled incorrectly on the medical notation as aquafor), is a healing ointment made by Eucerin.

testing. He was not given the referral and was told the child should be three to five years old for allergy testing. The parents were told to continue to avoid soy products, use Aquaphor or a similar product, and prescribed Elidel cream to use twice a day. The parents were further instructed to follow up if the symptoms worsened or there was no improvement.

In late December 2007, just before Christmas, R.F.'s face became inflamed with a rash. R.F. did not, however, appear bothered by the rash and the rash had a history of getting better and worse. On January 3 or 4, 2008, father called the doctor's office to make an appointment. The first available appointment was January 28, 2008.

When the physician's assistant saw R.F. on January 28, 2008, the rash covered his cheeks, chin, and the area around his mouth.[3] Father reported that, although the rash had been present for a year, without anyone being able to identify the cause, it had worsened in the last month. He had been applying the previously prescribed ointments for two weeks. The rashes had scabbed, and were cracked and had a honey-colored discharge in places. R.F. also had some scattered patches of rash on his trunk, back and legs. The physician's assistant referred R.F. to dermatologist, Dr. No, for a same-day appointment. The physician's assistant noted that R.F. appeared well-nourished

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[3] Different physician's assistants saw R.F. in October 2007 and January 2008.

and well-developed and did not appear to be in distress. She also made a notation of "Non Compliance" regarding the eczema/dermatitis. Dr. Cooper testified that he also saw R.F. during that appointment. He said 70 percent of the child's face, and large areas of the body, were involved with the rash. The discharge appeared to indicate a secondary infection and it was one of the worst cases he had seen. R.F. was assessed with impetigo as well as dermatitis.[4]

Father brought R.F. to Dr. No on the same-day referral. Dr. No found "there were eczematous plaques on the face, arms, and legs" and "[o]n the face, there was mild crusting." He prescribed antibiotics and a topical steroid, and scheduled a follow-up appointment for February 11, 2008. The parents, however, decided to change primary care physicians and were informed they needed a new referral from the new provider. An appointment was scheduled for March 2008.

On February 14, 2008, after the parents did not bring R.F. to the follow-up appointment with Dr. No, Dr. Cooper's office contacted Child Protective Services. A social worker and a public health nurse went to the parents' home on February 19, 2008. The nurse observed the rash on R.F.'s face and described the rashes on his back and legs as "severe." R.F. was seen to be scratching his leg.

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[4] Impetigo is a contagious bacterial skin infection.

The nurse also assessed R.F.'s brother, J.F., who was eight months old at the time. She noted that his head was asymmetrical and misshapen. The parents stated they believed this to be normal because J.F. was born that way and father had a misshaped head when he was a child. They were told that was not unusual and that his head would become normal-shaped in time. The nurse also assessed J.F. to be "flaccid," have delayed motor skills, and unable to sit up on his own. J.F. had not been seen by a physician since his two-week checkup at Dr. Cooper's office in July 2007. The social worker and the nurse directed the parents to make an appointment to have J.F. examined. J.F. had not been immunized yet because the parents did not believe immunizations to be necessary at that time.

Two days later, mother brought J.F. to Dr. Cooper's office for a checkup. J.F. weighed 15.68 pounds which was in the third percentile. One or both of his testes had not descended, he was unable to sit without support, and he had diaper dermatitis and a flaky patch on his cheek and head. He was assessed as "failure to thrive," acute. Dr. Cooper ordered a neurological consult regarding J.F.'s asymmetrical head and directed the child to return in two weeks. J.F. was also given his first round of immunizations. At the hearing, however, Dr. Cooper acknowledged that, in California, parents are not required to immunize their children.

The following day, February 22, 2008, DHHS filed section 300 petitions on behalf of R.F. and J.F. and, the day after that, removed the children from the parents' home.

On February 24, 2008, J.F. was seen at UCD Medical Center. He was diagnosed with dermatitis and impetigo. He was noted to be a "well-developed boy with an abnormally shaped anterior skull." Although J.F.'s head was notably misshapen, the EEG and MRI were unremarkable. By the time of the hearing, J.F.'s head had become normal-shaped.

DISCUSSION

DHHS contends the juvenile court erred in failing to find jurisdiction due to medical neglect and asks us to reverse the order dismissing the dependency petitions.

A juvenile court may determine that a child is subject to the court's jurisdiction under section 300, subdivision (b), if it finds by a preponderance of the evidence that "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment . . . ." (§ 300, subd. (b).) DHHS has the burden of presenting sufficient evidence of the necessity for juvenile court jurisdiction. (*In re Chantal S.* (1996) 13

Cal.4th 196, 210.) In order for the juvenile court to find jurisdiction under section 300, subdivision (b), it must find: "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

We review the juvenile court's dismissal of the dependency petition under the substantial evidence standard of review. (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199-200.) "If there is any substantial evidence to support the findings of the juvenile court, a reviewing court must uphold the trial court's findings. All reasonable inferences must be drawn in support of the findings and the record must be viewed in the light most favorable to the juvenile court's order. [Citation.]" (*In re Jeannette S.* (1979) 94 Cal.App.3d 52, 58.)

We repeat at length the juvenile court's explanation in dismissing the petitions. The juvenile court explained: "The Court has carefully considered all of the evidence including all of the reports that were previously identified and the testimony of all the witnesses. The Court has in reviewing the medical records--and this is a medical case. Basically, what this is about is was there appropriate care provided.

"In reviewing the history of the medical treatment of both of these children, with regard to [R.F.], the addendum that was filed on May 28, 2008, reflects the prior treatment with the

Folsom Family Clinic, and it appears very clear that the treatment the parents obtained for the child [R.F.] was regular, continuing.

"Any--appears to be [a] minor issue, including a diaper rash, that wasn't going away was dealt with. The visits to the doctor were regular. November 2005, January 2006, March 2006, again, March 2006 with the rash on the face becoming more of an issue on that date then again June 2006, September 2006, and December 2006.

"That's very regular treatment. That report also shows with regard to the child [J.F.] who is the alleged failure to thrive child, the results of the EEG test and the MRI and these were tests that had been scheduled and for which the parents have been alleged to have been neglectful for not following up with, and while it is not dispositive as to whether the parents were inappropriate in not following up, it certainly does indicate that there--as to the issues addressed by those tests, there are no issues present. Those were, basically, normal findings with regard to those tests.

"What it appears--and there is a conflict in the evidence as to what exactly transpired in the communications between the doctor's office and the parents, the parents indicated that they had for some time demanded a referral or--strike the word demanded--requested a referral to an expert and were advised by the office that this is something they could handle on a primary

care physician level and there wasn't a need for an expert, we did have the doctor who was not one of the people that they spoke with testifying that the office policy [was] when it's requested the referral is made.

"But then when one of his other employees was asked the question, she indicated that, in fact, there had been a request for a referral and that the response to that was an advisement that, no, we can handle this on a local level, and the referral was not given which contradicts the testimony from the doctor.

"The one other piece of medical evidence that we have is from Dr. No, and that is that following the same day referral from the primary care physician, Dr. Cooper, the dermatologist examined the child, made a diagnosis, gave recommendations and prescriptions for medication, and sent the child and the parents away.

"There's no indication in the letter of January 28th, 2008, from Dr. No of any extreme condition, of any suggestion that there is any medical neglect. It appears that the issue is one of Dr. Cooper's and Ms. Sullivan's [the second physician's assistant] not one generally found to be true by the other medical professionals who have seen this family."

The juvenile court then indicated that it found the parents' testimony credible and, while it believed they could have done more medical follow up, it did not find medical

neglect by a preponderance of the evidence. The evidence supports the juvenile court's findings.

DHHS continues to argue that the parents did not sufficiently follow up with medical appointments with respect to R.F.'s rash. The evidence supports the juvenile court's finding to the contrary. The parents brought R.F. to the doctor when he was four months old for a persistent diaper rash. He was diagnosed with dermatitis on his face and extremities in March 2006. Since that time, the rashes would become more and less severe, apparently in correlation to ingestion of soy products, which the parents tried to avoid. Each time the parents brought R.F. to the doctor, they were told to treat the rash with lotion and hydrocortisone and sometimes with short-term use of a steroid cream. While the parents were told to return if the rashes did not get better, they testified that the rashes did get better after the appointments. When the rashes worsened, they returned to the doctor. And although father requested to be referred to a dermatologist, Dr. Cooper's office did not make the referral until the final appointment. At that time, the rash had become infected but the dermatologist did not note it as an extreme condition and simply prescribed antibiotics and a steroid.

With respect to J.F., the only evidence of medical "neglect" presented by DHHS was that the child was underweight and had not had well-baby checks since he was two weeks old.

Apparently, the child was born with a misshapen head and the parents were told not to be concerned about it. Indeed, EEG and MRI tests revealed no abnormalities and his head was fine by the time of the hearing. Although the parents had chosen not to have J.F. immunized on the usual schedule, Dr. Cooper acknowledged that they are not required to do so. DHHS presented no evidence that any failure of the testes to descend was a cause of concern or due to medical neglect, nor did it present evidence that J.F.'s failure at eight months to sit on his own was medically remarkable.

In sum, there is substantial evidence to support the juvenile court's finding that DHHS failed to prove medical neglect by a preponderance of the evidence.

DISPOSITION

The order dismissing the dependency petitions is affirmed.

CANTIL-SAKAUYE, J.

We concur:

SIMS, Acting P. J.

RAYE, J.